IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16541 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANBHAI BAHADURBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16541 of 2003

MR CHETAN K PANDYA for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. Ms.Paurami Sheth, learned AGP has placed on record the affidavit in reply on behalf of respondent

no.2. Same is kept on record.

2. Heard Mr.C.K.Pandya, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondents.

3. In this petition under Article 226 of the Constitution of India, the detenu - Ramanbhai Bahadurbhai Rathod, through his wife, has been challenging the order of detention dated 29.8.2003 (Annexure-A) passed by respondent no.2 under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and quashing and setting of the said order.

4. In the grounds of detention (Page-51 of the paper book), two cases under Section 66(1)(B), 65(A)(E) and Section 81 of the Bombay Prohibition Act have been referred to and it is alleged that in the first case registered on 29.5.2003, 386 bottles of English liquor of outside State and in the second case registered on 3.5.2003, 2736 bottles of English liquor of outside State have been allegedly recovered from the detenu. In the grounds of detention, it is further stated that the detenu is a 'bootlegger' within the meaning of Section 2(B) of the PASA Act. The grounds of detention further state that the criminal activity of selling English liquor in huge quantity is likely to cause adverse effect to standard of life and the health of public and because of such anti-social activities, the detenu is an obstruction to the maintenance of public order. It is also alleged that if the detenu is released on bail, then there is every possibility that he would continue indulging in such anti-social activities.

5. Challenging the impugned detention order, it has been argued by Mr.C.K.Pandya, learned advocate for the petitioner that the impugned order of detention is liable to be quashed and set aside firstly on the ground of delay in passing the same since the last case was registered against the detenu on 31.5.2003, secondly there is no basis for observing that if the detenu is enlarged on bail, then he would indulge in such anti-social activities and thirdly, that the activity of bootlegging by itself would not be an obstruction to the maintenance of public order and that besides being a bootlegger, Court has to consider the other credible material whether the activities alleged against the detenu is an obstruction to the public order or not.

6. It is submitted by Ms.Paurami Sheth, learned AGP

that the detention order does not suffer from the vice of delay inasmuch as the detenu was released on bail on 4.6.2003. That as the material was to be collected, the charge-sheet could be filed on 4.8.2003 and that some time would be required in collecting the material and also by the sponsoring authority and thereafter, the sponsoring authority forwarded the papers and the same were received by the detaining authority on 22.8.2003 and the detention order came to be passed on 29.8.2003. It is further contended that as the detenu has been enlarged on bail on 4.6.2003 in the second case and looking to the activities in which he has been indulging, the apprehension that after getting released on bail he would indulge in the same activity cannot be said to be without any basis. It is further contended that the activity of bootlegging by itself is sufficient to invoke Section 3(1) of the PASA Act. In this regard reliance has been placed on the decision in the case of Kanuji.S.Zala Vs. State of Gujarat and others, 2000 (4) GLR 3256.

7. Taking the last contention first, it may be seen that in the instant case, it is alleged in the ground no.3 of detention that the illegal activity of indulging in the sale of foreign liquor in big quantity can have adverse effect on the standard of life and health of public, and because of such anti-social activities, the detenu has become an obstruction in the maintenance of public order.

8. In the case of Kanuji S. Zala (Supra) in Para.4, it has been observed that, ".... in this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. the detaining authority has also stated that the statements of witnesses clearly show that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed in those locality for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and closed their doors.

In Para.5, it is observed that, "What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. .... The observations made by this Court in the case of Om Prakash

Vs. Commissioner of Police, 1989 Supp. (2) SCC 576 : AIR 1990 SC 496, that 'as in Piyush Mehta Case, (AIR 1989 SC 491), the material available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act, and as such, the order is liable to be quashed' are to be understood in the context of the facts of that case."

In para.6, it is observed that, "As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record , it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

9. Thus, the Supreme Court in the case of Kanuji S. Zala (Supra) confirmed the order of the District Magistrate in view of the material on record as regards the satisfaction reached by the District Magistrate and the same was found to be reasonable and genuine.

10. Mr.Pandya has referred to the decision of the Division Bench in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 wherein the Division Bench in Para.4 has reproduced the observations in Para.5 by the Supreme Court in the case of Kanuji S. Zala (Supra). The Division Bench observed that, "observation cannot be picked in isolation but the order has to be read as a whole and reading the decision as a whole, it was necessary for the Court to consider the presence of credible material before the detaining authority has been insisted upon. The litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. It has been observed that, "the judgement is to be read as a whole and even the observations which have been made by the Supreme Court in Para.6 of the judgement are to be considered in light of the earlier observations made in Para.5 where the presence of credible material before detaining authority has been insisted upon."

11. Mr.Pandya has also referred to the decision in the case of Rashidmiya @ Chhava Ahmedmiya Shaik Vs. Police Commissioner, Ahmedabad & Others, (1989) 3 SCCC 321 and Piyush Kantilal Mehta Vs. Commissioner of Police, AIR 1989 SC 491 which have been referred to in the case of Kanuji S. Zala (Supra).

12. It has been submitted by Ms.Paurami Sheth, learned AGP that in the earlier case before the Supreme Court, the aspect of public health was not considered as the same was not before the Supreme Court. It is true that the aspect of public health in case of bootlegging was not considered as the same was not pressed into service before the Supreme Court on earlier occasions. In the case of Kanuji S. Zala (Supra), the Supreme Court has in clear terms observed in Para.5 that what is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which the reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act.

13. The case before the Supreme Court was argued from the aspect of the adverse effect of bootlegging activity of detenu on the public health. It has been clearly suggested from the observations made in Para.5 that while dealing with the cases under Sections 3 and 3(4) of the PASA Act where the person is alleged to have been indulging in the bootlegging activities, the presence of credible material before the detaining authority has been insisted upon. Thus, reading the judgment as a whole in the case of Kanuji S. Zala (Supra) in cases under Section 3(4) of the PASA Act where the person has been indulging in the bootlegging activities over and above the activities alleged, what is required to be considered or what has been insisted upon by the Supreme Court in such cases i.e. cases under Section 3(4) of the PASA Act on the allegations of bootlegging there has to be credible material before the detaining authority on the basis of which reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. Thus, reading the judgement as a whole, it does not appear that in cases under Section 3(4) only bootlegging activities by the petitioner would be sufficient. But, while dealing with the cases under Section 3(4) of the PASA Act, there has to be credible material on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity on the maintenance of public order.

13. In the instant case, except the statement in Ground No.3 as referred to above, there is no credible material before the detaining authority on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity of the detenu on the maintenance of public order. In the case of Kanuji S. Zala (Supra) as observed in Para.4 that statement of witnesses before the detaining authority clearly showed that the even tempo of public life was disturbed in those localities for some time and the material on record also showed that members of the public of those locality had to run away from there or to go inside their houses and closed their doors and in light of this evidence, the Supreme Court held that it cannot be said that the satisfaction of the District Magistrate in this behalf was not reasonable or no such material in the present case appears to have been placed before detaining authority so as to draw a reasonable inference as regards the adverse effect on the maintenance of public order.

14. Since this petition can be decided only on the point of obstacle to the maintenance of public order by the bootlegging activities of the detenu in light of above referred decisions of the Supreme Court, in my opinion, other contentions raised by the detenu are not required to be gone into.

15. Under the circumstances, the impugned detention order is liable to be quashed and set aside and petitioner set at liberty.

16. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 29.8.2003 (Annexure-A) passed by respondent no.2 against the detenu -Ramanbhai Bahadurbhai Rathod is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted."

(N.G.Nandi,J.)

(vipul)